

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

---

**Thomas Kennedy,**  
Appellant,

**v.**

**Mills County Board of Review,**  
Appellee.

---

**ORDER**

**Docket Nos. 12-65-0290 thru 0292**

---

On April 22, 2014, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Jordan Glaser of Peters Law Firm, PC in Council Bluffs, Iowa represented Appellant Thomas Kennedy. Attorney Brett Ryan of Watson & Ryan, PLC in Council Bluffs, Iowa represented the Board of Review at hearing. The Appeal Board ruled Exhibits 1-13 offered by the Appellant were excluded because they were both untimely and were requested, but not provided to supplement the initial discovery responses. Board of Review Exhibit A was also excluded as untimely. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

On behalf of the owners, Thomas Kennedy appeals from the Mills County Board of Review decisions reassessing three contiguous parcels of residential property located in the Pony Creek Development in rural Mills County, Iowa. The appeals on these parcels were consolidated for hearing.

Kennedy protested to the Board of Review on the ground that the properties were assessed for more than the value authorized by law and that there was an error in the assessment under Iowa Code sections 441.37(1)(a)(2) and (4). Kennedy believed the three parcels should be combined for

assessment purposes. His petitions to the Board of Review also sought reduced assessments.

Kennedy's claim of error and notations in the equity section of the petition essentially restates his claim of over-assessment. The Board of Review granted the petitions, in part, and reduced the assessed land values by 5%. This is in addition to the 25% topography adjustment applied to Parcel 03251-003-02, 50% topography applied to 03252-001, and the 50% economic obsolescence applied to both parcels by the Assessor.

Kennedy then filed his appeals with this Board and claimed the same ground and relief. The following chart provides information on the land assessment of each parcel.

Docket	Parcel	Lot	Acres	Assessed Land Value	Board of Review Land Value	Appellant Land Value
12-65-0290	03251-003-02	24	0.152	\$2,835	\$2,693	not listed
12-65-0291	03251-004	25	0.384	\$20,111	\$19,105	not listed
12-65-0292	03252-001	26	0.085	\$1,203	\$1,143	not listed

Of the three parcels, only one contains any improvements. Lot 25 is improved by a one-story, manufactured home built in 1993. The dwelling has 1974 square feet of living area, a full, walk-out basement with 1500 square feet of living quarters finish, and a 624 square foot attached garage. The property has a 312 square-foot enclosed breezeway, porch, a concrete patio and wooden deck. The property is average construction quality (4+00) and in normal condition. The dwelling was initially assessed for \$161,586, which was unchanged by the Board of Review. The total assessment of land and improvements for this parcel was reduced to \$180,691 by the Board of Review.

Appraiser Jeanne McDonald testified on behalf of Kennedy. She is also familiar with the parcels and described the features of each. She explained that Lots 24 and 26 are only narrow strips of land bordering Lot 25, which is improved by the manufactured home. She describes the dwelling as a big rectangle with lower quality construction. McDonald reports the lots slope down to retaining walls

on the side of the old lake. While she provided descriptions of the properties, she did not provide any evidence or opinion of market value.

Kennedy testified the dwelling was made by the same manufacturer that constructed his home. He believes the size and foundation are also comparable, but the subject dwelling is ten years newer than his. He calculated a \$500 to \$750 difference in value per year. Based on this range, he adjusted the assessed value of his property upward to account for the ten-year difference in dwelling age. He describes the use of northern half of the property (Lot 26) for a storm sewer and maintenance road to the drainage easement. He reports thirty feet of the property to the south (Lot 24) is used for the septic system. In Kennedy's opinion, the land should be valued between \$12,000 and \$13,000 per acre, not the \$40,000 per acre value given by the assessor. However, he provided no evidence to support his opinion.

County Assessor Christina Govig testified that adjustments were made to the unimproved lots (Lots 24 & 26) for typography and economic obsolescence because of their location. In addition, the Board of Review applied an additional 5% adjustment to all three lots.

This Board recommends that the Assessor explore combining the parcels of the unbuildable lots (Lots 24 & 26) with the bordering improved lot (Lot 25) for the next reassessment as permitted by Iowa Code section 428.7. Section 428.7 provides that "descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit." *See Sevde v. Bd. of Review of Ames*, 434 N.W.2d 878, 880 (Iowa 1989) (stating that "the assessor [has] some discretion to aggregate separately described tracts for valuation purposes.").

### ***Conclusions of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board

determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

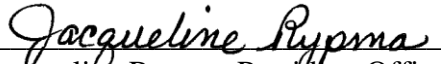
In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

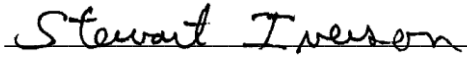
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

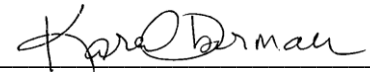
Kennedy presented testimony to show the deficiencies in Lots 24 and 26. However, he did not present any admissible evidence to show the fair market value of any of the three parcels, which is necessary to prevail on his claims. In summary, we determine the preponderance of the evidence does not support Kennedy's claims of over-assessment.

The Appeal Board orders the assessments of the subject properties as determined by the Mills County Board of Review, as of January 1, 2013, are affirmed.

Dated this 15th day of May, 2014.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

Copies to:

Jordan Glaser  
Peters Law Firm, PC  
233 Pearl Street  
Council Bluffs, IA 51502  
ATTORNEY FOR APPELLANT

Brett Ryan  
Watson & Ryan, PLC  
535 West Broadway, Suite 200  
PO Box 646  
Council Bluffs, IA 51502  
ATTORNEY FOR APPELLEE